

Prac.]

NOTES OF CANADIAN CASES.

[Prac.]

Chambers may take the administration accounts in Chambers without referring them to the Master's office. But to all such references Chancery order 220 applies.

When on application for such order it appears that there is a substantial and preliminary question to be decided, such question should be decided before the reference is ordered and the Court may limit a time within which the parties may try the issue. But if the issue is not tried, or the order is made in Chambers without first directing such issue, the parties are held to have waived such preliminary question and cannot raise it in taking the account under such order in the Master's office.

The Jurisdiction of the Master's office is not co-extensive with that of the Court in inquiring into, and adjudicating upon, the validity of documents, and there is no authority to support any implied or assumed delegation of the functions of the Court to the Master. Nor is there any practice in the Master's office which allows parties to obtain a reference to the Master, so as to evade the ordinary judicial functions of the Court and then invoke those judicial functions in a tribunal of delegated and subordinate jurisdiction.

The plaintiffs, when taking accounts before the Master under the ordinary Chamber order for the administration of personal estate, sought to have it declared that a bequest to R., who was one of the witnesses to the will, was invalid.

*Held*, 1. That the Master had no jurisdiction under such order, and on oral pleadings to adjudicate upon the validity of the will.

2. That even if there was such jurisdiction it could not be exercised in the absence of a personal representative of R.'s estate.

*Quare*, whether since *Ryan v. Devereux*, 26 U. C. R. 100, such a bequest would be held to be invalid.

Where a will creates a life estate in chattels, the executor is discharged when he hands over such chattels to the tenant for life. The tenant for life, and not the executor, then becomes liable for them to the person entitled in remainder.

Boyd, C.]

MILES V. ROE.

[Feb. 4.]

*Dominion election law—Penalties—Wilful delay.*

Election to the House of Commons in the County of Lennox, 1882. An action to recover penalties for bribery at an election under Statute of Canada, 37 Vict. ch. 9.

The acts of bribery complained of were committed between the 13th and 23rd of June, 1882. The writ was issued on the 12th June, 1883, and was served on the defendant on the 27th Nov., thereafter. The defendant, on the 30th Nov., moved to dismiss the action for wilful delay in prosecution under sec. 119 of the Act, but the Master in Chambers refused to make the order, and an appeal was taken to BOYD, C.

*Held*, that such delay as would not expose an ordinary suit to dismissal may be fatal to an action under this Act under the special provision that such an action shall be carried on "without wilful delay."

The *onus* rests on the plaintiff to account for and satisfactorily explain this delay.

The plaintiff's solicitor swore that he was also solicitor for the petitioner in the Lennox Election Petition, at which election the acts of bribery complained of are alleged to have been committed, and in order not to endanger the success of that petition it was deemed advisable not to serve this writ until that petition was disposed of, which on account of objections to the jurisdiction was not tried till 10th Oct., 1883. He also, in an affidavit, explained the further delay in this way, that at the trial of the election petition an application was made for a summons against the defendant under 39 Vict. c. 9, to have the penalties for bribery imposed upon him, and that the application was not disposed of till the 23rd Nov., at which date the Judge declined to interfere.

*Held*, that there had been wilful delay not to be excused by the explanations given, and that the plaintiff was entitled, as of right, to have the action perpetually stayed or dismissed.

The order was made dismissing the action without costs for the reason that a *prima facie* case of bribery was established on the part of the defendant which he did not attempt to contradict.

*Clement*, for the defendant (appellant).

*Bethune, Q.C.*, and *Aylesworth* for the plaintiff (respondent).